

सं. औ.वि./एफ.डी./78-84/25912.—चूंकि हरियाणा के राज्यपाल की राय है कि मै. राज इंजीनियरिंग ग्राम उद्योग समिति, शाप नं० 224, मार्केट नं० 1, एन. आई. टी., फरीदाबाद, के श्रमिक श्री शिव करन सिंह तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई औद्योगिक विवाद है ;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निदिष्ट करना वांछनीय समझते हैं ;

इसलिए, अब, औद्योगिक विवाद अधिनियम, 1947 की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं. 5415-3-अम-68/15254, दिनांक 20 जून, 1968 के साथ पड़ते हुए अधिसूचना सं. 11495-जी-अम-57/11245, दिनांक 7 फरवरी, 1958 द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय के लिए निदिष्ट करते हैं जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा सम्बन्धित मामला है :—

क्या श्री शिव करन सिंह की सेवाओं का समापन न्यायोचित तथा ठीक है ? यदि नहीं, तो वह किस राहत का हकदार है ?

एस० के० महेश्वरी,
संयुक्त सचिव, हरियाणा सरकार,
श्रम विभाग ।

LABOUR DEPARTMENT

The 5th July, 1984

No. 9/5/84-Lab/4077.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of Chief Engineer (Thermal Plant), Haryana State Electricity Board, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 94/1981

between

SHRI BABU LAL, WORKMAN AND THE MANAGEMENT OF CHIEF ENGINEER
(THERMAL PLANT), HARYANA STATE ELECTRICITY BOARD, FARIDABAD

Present :

Shri S. S. Gupta for the workman.

Shri Narinder Pal Singh for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the industrial disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Babu Lal, workman, and the management of M/s Chief Engineer (Thermal Plant), Haryana State Electricity Board, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of service of Shri Babu Lal was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The demand notice dated 24th December, 1980 was treated as claim statement as per request made by the claimant, in which it was alleged that he was working as T-Mate since April, 1975 and his work and conduct was satisfactory but his services were terminated in July/August, 1976 illegally, and *mala fide* due to which he was entitled to reinstatement with full back wages.

3. The Management in their written statement dated 27th May, 1981, pleaded that the reference was bad in law on account of delay. It was also pleaded that the claimant remained employed with the Chief Security Officer during the construction of second unit of Thermal Project from November, 1975 to June, 1976 as T-Mate on work-charged basis, and since his service was less than one year, no compensation was paid to him and before terminating his service, the claimant was informed about the same.

4. The claimant in his rejoinder dated 9th July, 1981, reiterated the plea taken in the demand notice.

5. On the pleadings of the parties, the following issues were framed on 10th July, 1981 :—

- (1) Whether the reference is bad on account of delay and laches. O.P.M.
- (2) Whether the termination of service of Shri Babu Lal was justified and in order? If not, to what relief is he entitled? O.P.M.

6. It may be mentioned that the management has examined one witness and document Ex. M-1 was tendered into evidence. The workman examined two witnesses and documents Ex. W-1 and W-2 were tendered into evidence. After going through, the evidence, both oral and documentary, and hearing both the parties, my findings on the above issues are as under :—

Issue No. 1 :

7. It was stated on behalf of the management that the termination took place in June, 1976 while the demand notice was submitted by the claimant on 24th December, 1980 and on account long delay, the reference was bad in law. In the ruling reported as *M. M. Venkatachiah v. State of Mysore and another*, 1970-Lab.I-C.501, it is laid down that the delay in presenting the application did not justify, refusal of the Government to make the reference. In the ruling reported as *Nityanand M. Joshi and another v. The Life Insurance Corporation of India and others*, Air-1970-Supreme Court 209, it is laid down that the application under section 33-C(2) of the Industrial Disputes Act, 1947, could not be held to be barred under article 137 of the constitution. In the ruling reported as *R.R. Herman and Mohatta (India) Pvt. Ltd. v. The Seventh Industrial Tribunal, West Bengal and others*, 1977-Lab.I.C. (N. O. C.) 14 (CAL), it laid down that there is no period of limitation provided under section 10 of the Industrial Disputes Act, 1947. Consequently on the ground of delay, the reference is not bad. The issue is decided accordingly against the management.

Issue No. 2 :

8. The Management examined MW-1 Shri S. M. Chhatwal, Chief Security Officer, who stated that the claimant was employed on 1st December, 1975 and he continued upto 30th June, 1976, when the construction work was completed and that not only the claimant but also the remaining workmen were retrenched. He further stated that Ex. M-1 was the notice which was given by the Management. The claimant examined Shri I. C. Kaushik, L. D. C., office of the Executive Engineer (Construction) (WW-1) who stated that according to their record, the claimant remained employed with effect from 17th April, 1975 to 30th November, 1975 and that the attendance register did not show as to where the workman had gone after 30th November, 1975. Shri Babu Lal workman (WW-2) stated that he was employed in April, 1975 as T-Mate and continued there till July, 1976 but no appointment letter was issued nor any termination letter was given to him. He proved the documents Ex. W-1 and W-2.

9. The testimony of Shri S. M. Chhatwal MW-1 is to the effect that the claimant was employed on 1st December, 1975 and was retrenched on 30th June, 1976 because construction work was completed and all the workmen were retrenched at that time. In the letter Ex. M-1, it is recited that the services of the claimant and the other workmen were not required the construction work of that unit was completed. The Management has, therefore, led evidence to show that the claimant was retrenched because he became surplus along with other workmen, when the construction work was completed on 30th June, 1976. The testimony of Shri I. C. Kaushik WW-1 is to the effect that the workman remained employed from 17th April, 1975 to 30th November, 1975. He, in cross-examination, stated that the presence of the claimant was not marked in their Division after 30th November, 1975 because after completion of the work the workmen were retrenched. Shri Babu Lal (WW-2) stated that he was employed in April, 1975. In cross-examination he stated that he was removed on 30th June, 1976. He stated that he had filed an application for the post of T. Mate. The evidence, therefore, goes to prove that the claimant was working in some other Division before 30th November, 1975 and was retrenched because the work was completed in that section and he was employed in the present unit on 1st December, 1975 and was retrenched on 30th June, 1976, when the work in the present Division was also completed. No evidence has been led by the claimant to prove that he was transferred from previous Division to the present Division on 1st December, 1975. He had not completed one year continuous service on 30th June, 1976 in the present Division. Therefore the provisions of section 25-F of the Industrial Disputes Act, 1947 do not apply to this case and as such he was not entitled to any compensation etc. Documents Ex. W-1 and W-2 relate to the period of 1978 when the claimant filed an application for his appointment. These documents have no effect on the facts of the present case because the claimant was retrenched with effect from 30th June, 1976. It may be mentioned that the rulings reported as *Hindustan Steel Limited and State of Orissa and others*, 1977-I-LLJ, I, *Satosh Gupta v. State Bank of India*, 1980-II LLJ 72, *Asstt. Personnel Officer, Sourthern Railway Clavakkot K.T. Antony*, 1978-II-LLJ-254, *State Bank of India v. N. Sundaramoney*, 1976-I-LLJ page 478. *The Executive Engineer, Electrical Division, Nagpur and another v. Prakash Devidas Kalasait*, 1983-Lab-I-C. 1627, *Sammon India Limited v. Niranjan Dass* 1983-Lab-I-C-1865, *Ithad Motor Transport (P) Ltd. and Vir Singh and others*, 1974-II-LLJ page 243, *P. Prabhakaran and others v. General Manager, Kerala State Road Transport Corporation and another*, F. L. R. 1981 (42) page 113, and *Mohan Lal v. Bharat Electronic Limited*, 1987-II-LLJ-70, were relied upon the representative of the workman which deals with the provisions of section 25-F of the Industrial Disputes Act, 1947. As already mentioned above these provisions do not help the claimant because he had not rendered continuous one year service when he was retrenched on 30th June, 1976.

10. In view of the above discussions, it is held that the termination of service of Shri Babu Lal claimant by the Management was justified and in order. The award is passed accordingly.

Dated the 4th June, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 417, dated the 6th June, 1984.

Forwarded (four copies) to the Commissioner, and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 11th July, 1984

No. 9/5/84-Lab/4270.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Puja Enterprises Pvt. Ltd., 14/5, Mathura Road, Faridabad :—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 257 of 1982

between

SHRI MANIK CHAND, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S PUJA ENTERPRISES PVT. LTD., 14/5, MATHURA ROAD,
FARIDABAD

Present.—

Shri M. K. Bhandari, for the workman.

Shri R. C. Sharma, for the respondent-management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/151/82/48641, dated 26th October, 1982, under section 10 (i)(c) of the Industrial Disputes Act, 1947 for adjudication the industrial dispute existing between Shri Manik Chand, workman and the respondent-management of M/s Puja Enterprises Pvt. Ltd., 14/5, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Manik Chand was justified and in order? If not, to what relief is he entitled?

According to the averment in the claim statement Shri Manik Chand, workman was employed with the respondent on 12th November, 1977 as Chowkidar on salary of Rs. 323 p.m. He was illegally terminated on 19th June, 1982. On 10th June, 1982 the respondent had sent a letter to the workman that the workman abandoned the job of his own. In fact the workman proceeded on leave from 1st May, 1982 to 6th May, 1982. He fell ill and sent his medical certificate to this effect. The statement of the respondent before the Labour-cum-Conciliation Officer that the workman resigned, is false.

The respondent has alleged in his written statement that the workman submitted his resignation on 30th April, 1982. This resignation was not accepted and the workman applied for long leave which was sanctioned upto 6th May, 1982. His name was kept on the roll of the company. The company waited for him for a long time. His resignation was accepted considering that the workman is no more interested.

Letter was written to the workman to report for duty but he has failed to do so. The resignation of the workman was accepted on 30th June, 1982. Additional plea is taken that the workman remained absent for continuance period of more than 10 days. It is serious act of misconduct. Hence his prayer for reinstatement may be rejected.

Rejoinder was filed denying the facts of the written statement and the reference was contested on the following issues :—

1. Whether the workman voluntarily resigned from service? If so, to what effect?
2. As per reference?

I have heard Shri Mohit Kumar Bhandari and Shri R. C. Sharma, representatives of the parties and gone through the evidence and record and also gone through the law produced by the parties. My findings on the issues are as follows :—

Issue No. 1—

It is contended that the services of the workman were terminated in view of the resignation. The workman originally denied his resignation dated 30th April, 1982 which is Ex. M-2. But later on

admitted it as correct. It is admitted by the respondent-management that this resignation was not accepted and the workman was allowed leave upto 6th May, 1982. It is, therefore, clear that the resignation of the workman was not accepted. This resignation was submitted by the workman because he wanted to go on leave, as he was granted leave. Hence the resignation had become infructuous. This issue is, therefore, decided against the respondent-management.

Issue No. II—

It is contended that the workman was granted leave upto 6th May, 1982, but he did not report for duty upto 30th June, 1982 in spite of the fact that the letter was written to him on 10th June, 1982. That the letter dated 10th June, 1982 is — The services of the workman have been terminated. The workman was requested to collect his dues from the Accounts Department. The reason for termination is that he did not report for duty after expiry of leave. It is, therefore, clear that he had voluntarily abandoned his services. It is correct that the workman remained absent for continuous period of more than 10 days after the expiry of leave. This amounts to misconduct, but he should be terminated after the departmental enquiry. In that case the workman was at liberty to explain his absence and his absence could be treated as leave without pay. Hence the services of the workman could not be terminated except for a regular enquiry as per Haryana Model Standing Orders.

Learned Counsel for the respondent management has cited *M/s. Escorts Limited, Faridabad Vs. Industrial Tribunal, Faridabad 1983-Lab.I.C. Page 223* of our own High Court. It is held that the plain language of standing order 37 specifically mentions an absence of 10 consecutive days. The respondent employee having overstayed his leave from the 27th of November to the 9th of December, 1975 had obviously remained absent for more than 10 consecutive days. In this case it is not held that no departmental enquiry was necessary. The point in issue was that period of holiday was also to be computed in 10 consecutive days. Similarly the learned counsel for the respondent has relied upon the judgement of our own high court in *M/s. Freewheels India Ltd., Faridabad Vs. State of Haryana 1984 Lab.I.C. NOC 82*. It is held that where the workman remained absent without leave for eight consecutive days without offering an explanation for his absence and only submitted a certificate of fitness then he must be deemed to have left service of the company in terms of Clause 13(f) and termination of service would be justified as although it was open for the workman to seek conversion of his period of absence into leave without pay in terms of the Standing Orders, he failed to avail of the opportunity by not offering an explanation for his absence to the satisfaction of the departmental head. In the present case no departmental enquiry was held. Under the rules the workman should have been an opportunity for his explanation. He has been submitting his medical certificates Ex. W-1 to W-3 and W-5 as proved by the postal receipt Ex. W-4 & W-2. I, therefore, find that the termination of services is not for misconduct for absence from duty for a continuance period of ten days. It is contended that the termination of service amounts to retrenchment under Clause 2(oo) of the Industrial Disputes Act, Clause 2(oo) reads as follows :—

2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman ; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
- (c) termination of the services of a workman on the ground of continued ill health ;

In the present case the workman did not voluntarily retire because the termination of service of the workman is retrenchment. Hence mandatory provision of section 25-F have been violated. The workman must have been forwarded or tendered his dues along with termination letter. In the present case the workman was not tendered or given the due. It is permitted that the workman should collect his dues from the Accounts Department. It is not sufficient in view of law laid down in *Rajasthan Canal Project Vs. Rajasthan Canal Rashtriya Mazdoor Union, LLJ-(2) 1976 page 25*. It is held that there must be an offer or tender or actual payment necessary. AIR 1967 S.C. 1206 has been followed. It has been held in *Ramani Mohan Industries Pvt. Ltd. Vs. Second Industrial Tribunal and others, LLJ-1981(i) page 363*, that if there is any non-compliance with the said provisions of Section 25-F, the order becomes illegal, then the position is as if there is no such order at all and in such case retrenchment cannot be given effect to at all in any manner whatsoever. In view of the above said law the provision of Section 25-F were not complied with the present case and termination of service of the workman amounts to retrenchment, which is illegal and unjustified. The reference is, therefore, answered against the management. The workman is entitled for re-instatement with continuity of service and full back wages. The award is given accordingly.

Dated the 16th June, 1984.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1237, dated the 19th June, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.